

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 APR 20 A 11: 20

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MM Docket No. 01-95
FM Broadcast Stations.)	RM-10093
Naches, Sunnyside and Benton City,)	
Washington.)	
)	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: April 11, 2001

Released: April 20, 2001

Comment Date: June 11, 2001

Reply Comment Date: June 26, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a petition for rulemaking filed by Butterfield Broadcasting Corporation ("petitioner") licensee of Stations KZTA(FM), Naches, Washington and KZTB(FM), Sunnyside, Washington. Petitioner proposes to substitute Channel 245C2 for 245A at Naches and modify Station KZTA's license accordingly, and to reallocate Channel 244A from Sunnyside to Benton City, Washington, and modify Station KZTB's license accordingly. Petitioner states that it will file the necessary applications to effectuate the modifications, if granted.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ This provision applies because the proposal to allot Channel 244A at Benton City is mutually exclusive with Station KZTB's current allotment of Channel 244A at Sunnyside. In addition, the allotment of Channel 244A at Benton City will provide the community with a first local transmission service, will not deprive Sunnyside of its sole aural local transmission service² and falls within priority (3) of the FM allotment priorities.³

3. In support of the proposals, petitioner states that they will serve the public interest because

¹ See Report and Order in MM Docket No. 88-526 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

² Petitioner states that Sunnyside also receives local service from NCE Station KAYB(FM), and AM Station KZTS (also licensed to Butterfield).

³ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [co-equal weight given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982)

the incorporated community of Benton City, 1990 U.S. Census population 1,806 persons, will receive its first local aural transmission service. Petitioner states that Benton City is a community for allotment purposes. It has a mayor/city council form of local government, local post office and zip code, shared school district, city water system and monthly newspaper with a paid circulation of 3,700, and a variety of retail establishments and employers.

4. It also states that the proposal will promote the public interest because it will eliminate the Section 73.213(c)(2) grandfathered short-spacing between Stations KZTA and KZTB. In addition, the upgrade at Naches will allow Station KZTA to provide enhanced service to the community and to a broader listening area. Petitioner also claims that with the overlap of the Naches upgrade and the change of community from Sunnyside to Benton City, a combined total of 157,055 persons will receive an additional service. Finally, it states that no white, gray, or underserved areas will be created.

5. We believe that these proposals could serve the public interest and we invite comment on them. Channel 245C2 can be allotted at Naches at a site 19.5 kilometers (12.1 miles) southwest of the community.⁴ Channel 244A can be allotted to Benton City at a site 4.9 kilometers (3.1 miles) east of the community.⁵

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No</u>	
	<u>Present</u>	<u>Proposed</u>
Naches, Washington	245A	245C2
Sunnyside, Washington	244A	---
Benton City, Washington	---	244A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before June 11, 2001, and reply comments on or before June 26, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

⁴ The coordinates for Channel 245C2 at Naches are NL 46-36-02 and WL 120-56-06.

⁵ The coordinates for Channel 244A at Benton City are NL 46-14-48 and 120-25-40.

Peter Gutmann, Esq.
Pepper and Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off protection.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioner. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.